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In re Application of :
Gabriel Lopez-Berestein et al :
Serial No.: 09/982,113 : PETITION DECISION
Filed: October 17, 2001 :
Attorney Docket No.: UTSC:660US :

This is in response to the renewed petition under 37 CFR 1.181, filed February 18, 2005, requesting review of the petition decision mailed January 26, 2005.

The petition decision has been thoroughly reviewed, but will not be revised.

As stated, “the Advisory Action clearly states that the amendment filed April 14, 2004, would raise new issues under 35 U.S.C. 112, second paragraph. Applicants’ amendment changes the latter part of claim 54 from “wherein said lipid material comprises DMPC and one or more of soybean oil and water” to “wherein said lipid material comprises DMPC and water”. Such amendment would be proper if it were not that dependent claim 141 states that the “lipid material comprises DMPC, SO and water”. Claim 141 clearly adds materials to the lipid material not found in claim 54 thus raising a consideration under 35 U.S.C. 112, second paragraph.”

Applicants argue that claim 141 had been under consideration without amendment since November, 2003. While this is correct, it always depended properly from claim 54 which recited up to three elements for the lipid composition. By limiting claim 54 to only two elements for the lipid composition, unamended claim 141 became subject to indefiniteness under 35 U.S.C. 112, second paragraph. For this reason the amendment was refused entry.

The renewed petition is **DENIED**.

The application will be forwarded to the examiner for consideration of the amendment and Appeal Brief filed November 4, 2004.

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number 571-273-8300.

A handwritten signature in black ink, appearing to read "B. M. Kisliuk". The signature is stylized with a large initial "B" and a long, sweeping underline.

Bruce M. Kisliuk
Director, Technology Center 1600